

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

June 13, 2013

In the Matter of K. L. PETERSON, Minor.

No. 313320

Wayne Circuit Court

Family Division

LC No. 11-504498-NA

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Before: K. F. KELLY, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals by right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(b)(i), (g), (j), and (l). We affirm.

This case involves the termination of respondent father's rights to his biological infant child. This child and respondent lived with the child's mother and another child, HD. HD is the infant child's half sibling as they share the same mother, however respondent was not the biological father of HD.

HD suffered a leg fracture, and she disclosed to Children's Protective Services that respondent had twisted her leg. Respondent and the mother of the minor child had a previously substantiated case involving improper supervision and domestic violence. A petition seeking termination of respondent's parental rights to the minor child was filed, and respondent pleaded no contest to the petition's allegations in order to avoid criminal liability. After the court found that it had jurisdiction, it proceeded to hold a best-interest hearing and ultimately terminated respondent's parental rights to the minor child. Respondent also had two sons, who did not reside with him, and his parental rights to his sons were terminated in another county during the pendency of these proceedings.

Respondent first contends that his rights to due process and effective assistance of counsel were violated when the trial court removed his original trial counsel after she failed to appear for a hearing. This issue was not preserved by an objection to the removal of respondent's original counsel or to the appointment of new counsel. Therefore, respondent must demonstrate that the alleged error was decisive of the outcome. *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994).

A court may remove an attorney on the basis of gross incompetence, physical incapacity, or contumacious conduct. *People v Johnson*, 215 Mich App 658, 663; 547 NW2d 65 (1996). Here, respondent's attorney had called in sick for a hearing, which resulted in an adjournment.

Then, without any notice or explanation to the court, the attorney did not show up for the rescheduled hearing, and the court removed her and appointed another attorney. Respondent's attorney had previously been late to hearings and had been unprepared when she did appear. Thus, the court did not abuse its discretion nor violate respondent's due process rights by the removal of his original counsel or the appointment of new counsel. *Id.* Respondent has not demonstrated that his new counsel was ineffective or that the outcome of the trial would have been different if the original counsel had remained as his attorney. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995).

Respondent next argues that the court abused its discretion by failing to grant a continuance for his new counsel to prepare. A trial court in a child protective proceeding may not adjourn a hearing except for good cause and after considering the best interests of the child. MCR 3.923(G). To demonstrate good cause for adjournment, the moving party must show a "legally sufficient or substantial reason." *In re Utrera*, 281 Mich App 1, 10-11; 761 NW2d 353 (2008). This Court reviews the trial court's decision regarding whether to adjourn a termination hearing for an abuse of discretion. *Id.* at 8.

Respondent had pleaded no-contest to the allegations in the petition. His new counsel was appointed during the best-interest phase. The new counsel could not change the events that had already occurred in the case, did not indicate any problem with the amount of time for preparation, and did not request any additional time. In addition, the court did not "deny" an adjournment, as respondent asserts on appeal, because no request was made for an adjournment. However, the record shows that the court actually did adjourn the best-interest hearing to give new counsel an opportunity to read through the file and familiarize himself with the case. Therefore, this claim is without merit. The trial court did not abuse its discretion.

Next, respondent contends that he was denied the effective assistance of counsel because the court should have adjourned the best-interest hearing so that his new counsel could obtain an expert witness to testify regarding the effects of a vitamin D deficiency on the bones of the injured child. By pleading no contest to the allegations in the petition, respondent knowingly gave up his right to a trial, to confront witnesses, to have the petitioner prove the allegations in the petition, and to have the court subpoena any witnesses respondent believed could give testimony in his favor. MCR 3.971(B). The trial judge made a very clear record and made certain respondent was aware of his rights. Once respondent pleaded no contest, the case moved to the best-interest phase and, other than on the subject of the best interests of the child, he could not introduce any evidence or witnesses. Respondent has failed to demonstrate how the outcome of this case would have been different if an expert witness would have testified that a vitamin D deficiency can cause a weakening of the bones. As our Supreme Court has stated, "A tortfeasor takes a victim as the tortfeasor finds the victim and will be held responsible for the full extent of the injury, even though a latent susceptibility of the victim renders the injury far more serious than reasonably could have been anticipated." *Wilkinson v Lee*, 463 Mich 388, 394-395; 617 NW2d 305 (2000). There was documentation of respondent's history of violence and the intentional twisting of the child's leg. The fact that the child may have had a vitamin D deficiency would not have changed the facts of the case. We find that respondent has failed to demonstrate that counsel made any mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

Respondent next claims that the trial court abused its discretion when it denied payment for an expert witness to testify on his behalf. The record shows that no motion was filed seeking payment for an expert witness to testify for respondent. Thus, the trial court did not deny payment for an expert witness. No abuse of discretion occurred.

Next, respondent contends that the trial court clearly erred when it found clear and convincing evidence to support the statutory grounds for termination. Respondent's no contest plea precludes a claim that the trial court erred in finding clear and convincing evidence to support the statutory grounds for termination of his parental rights. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Nonetheless, the evidence establishing statutory ground for termination of respondent's parental rights to the minor child was proven by a preponderance of the evidence, and we find no error. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

Respondent's claim that the failure to offer him rehabilitative services precluded termination is without merit. "Generally when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009), citing *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005); MCL 712A.18f(1). However, services are not mandated in all situations. *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000). Where, as here, aggravated circumstances were present, which mandated a petition requesting termination at the initial disposition, reasonable efforts to prevent the child's removal or reunify the family were not required. MCL 722.638(1) and (2); MCL 712A.19a(2)(a); *In re Rood*, 483 Mich 73, 118; 763 NW2d 587 (2009).

Finally, respondent contends that the trial court clearly erred when it found that termination of his parental rights was in the minor child's best interests. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). We disagree. The record contained sufficient evidence that respondent caused the injury to HD. However, he never accepted the responsibility or acknowledged that his actions caused the injury. In fact, he blamed HD for the injury. Respondent had a history of violence against his ex-wife and against his current partner, the minor child's mother. The most recent incident occurred just after the injury to HD, when respondent returned to the home and assaulted the child's mother, and her injuries required hospital care and stitches. The psychologist who evaluated respondent at the Clinic for Child Study reported that respondent would not benefit from counseling or services because he would be totally resistant to self-improvement. Respondent demonstrated that he would not benefit from services by his failure to acknowledge his anger issues and violent tendencies. There was sufficient evidence to support the court's finding that termination of respondent's parental rights was in the best interests of the minor child.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Douglas B. Shapiro  
/s/ Amy Ronayne Krause